IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

FAO (HMA) No. 486 of 2002.

Judgment reserved on : 22.8.2007

Date of Decision: 23.10. 2007.

Shri Chand Parkash Sharma **…..Appellant.**

Versus

Smt. Kaushlya Devi **……Respondent.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Bimal Gupta, Advocate.

For the Respondents: Mr. Bhupinder Gupta, Sr. Advocate, with Mr. Janesh Gupta, Advocates.

Dev Darshan Sud, J.

This is the husband's appeal against the judgment of the learned District Judge, Solan, dismissing the petition filed by him under Section 13 of the Hindu Marriage Act,1955 (hereinafter referred to as the Act) praying for divorce on the ground that the petitioner has been treated with cruelty and as such the marriage be annulled by a decree of divorce. The petition was resisted by the respondent on a number of grounds and she had expressed her willingness before the learned trial Court to live with

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

the husband. She was asked to be present in this Court, and, she again expressed her desire to live with her husband. No reconciliation could be effected despite the best efforts made by me.

This is a rather unfortunate case where petition for divorce has been filed before the learned District Judge by the parties after a period of more than 21 years of marriage. The parties to this petition have one son who is now employed and happily settled in life The allegations of cruelty which have been leveled by the petitioner are that after the solemnization of the marriage the parties were living a normal life for sometime. The respondent did not like staying in a joint family of the petitioner which consisted of his three younger brothers and two sisters. It was pleaded that the appellant being eldest in the family, was taking care of the other members of the family in accordance with the obligations imposed upon him by Hindu custom and usages. He pleaded that the respondent started finding faults with the members of his family and pressurizing the appellant to stay away from them in a separate residence. The appellant alleges that in order to maintain matrimonial peace, he did not protest, which was interpreted by the respondent as a sign of weakness and she continued with her acts/behaviour with belligerence. So much so, the respondent started treating the brothers of the of the petitioner with disrespect. It is also pleaded that respondent abstained from matrimonial sexual relations, starting quarreling on minor pretext(s) with regular frequency causing unbearable mental tension to the petitioner. Although efforts were made to patch up the matter but he remained unsuccessful in his endeavour. It is also pleaded that arrangements were made between the parties to live in peace in separate residence and for this purpose

appellant was to provide Rs.1600/- per month as maintenance in addition to separate living accommodation to her which he did.

A petition under Section 10 of the Hindu Marriage Act, 1955 for restitution of conjugal rights was also filed by the appellant which was pending at the time of institution of this petition. The appellant alleges that after the filing of that petition, he was shocked to know that false allegations have been made by the respondent in writing to his superiors in which it was alleged that the appellant was exercising fraud to obtain divorce from the respondent; was having extra marital affairs, he had children outside the wedlock and posed grave danger to the life and limb of the respondent. The respondent was aware that these allegations are false and would also adversely affect the reputation of the petitioner and expose him to disciplinary action. According to the appellant these allegations individually or jointly constituted mental cruelty as envisaged by the Act. The respondent is alleged to have gone to the extent of saying that the petitioner is of a loose moral character having sexual relation with all kinds of women. The respondent resisted the petition on a number of grounds.

The learned District Judge, after consideration of the oral and documentary evidence held that the charges of cruelty were not established. It was not disputed before the Court below that the petitioner, had, after solemnization of marriage improved his educational qualifications and was conferred a degree of Doctorate. The respondent had read only upto the middle standard. At the time of marriage, the petitioner was studying for his B.Com. degree. The Court held that the relationship between the parties had become skewed because of the

disparity in their educational qualifications. On an appreciation of the entire evidence, it was concluded that it was the petitioner himself who was responsible for creating a situation resulting in tension in matrimonial relations and under no circumstances he could be allowed to take advantage/benefit of his own acts and pray for dissolution of the marriage on the grounds as pleaded.

Learned counsel appearing for the parties have placed reliance on judgments of the Hon'ble Supreme Court and High Courts in support of their respective contentions as to whether divorce should be granted or not.

Dealing with the question of cruelty, the Hon'ble Supreme Court in **A. Jayachandra v. Aneel Kaur AIR 2005 SC 534** has held **:**

> "11. The expression 'cruelty' has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such

cases, the cruelty will be established if the conduct itself is proved or admitted (*See Sobha Rani v. Madhukar Reddi, AIR 1989 SC 121)*

12. To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party".

Learned counsel for the appellant submits that the appellant is entitled to divorce irrespective of the fact as to which party is to blame

for the breakdown of the marriage, once it is established that the marriage had broken down irretrievably and there is no chance of cohabitation. He relied upon **Kanchan Devi v. Promod Kumar Mittal and another AIR 1996 SC 3192** wherein their Lordships, exercising powers under Article 142 of the Constitution of India, had dissolved the marriage between the parties since they had been fighting tooth and nail in all the courts upto the Hon'ble Supreme Court and had been living apart for more than a decade with no chances of reconciliation.

In **Dinesh Kumar Mandal v. Mina Devi and another AIR 2005 Jharkhand 77** the High Court of Jharkhand was adjudicating an appeal filed by the husband against the judgment of the District Judge declining a decree for divorce. The husband had alleged cruelty against his wife on the ground that she was living in adultery which ground had not been proved. The marriage was annulled on the ground of irretrievable breakdown. Learned counsel sought support for grant of divorce to the appellant from the decision in **Chanderkala Trivedi (Smt) v. Dr. S.P.Trivedi (1993) 4 SCC 232,** wherein the wife had appealed against the grant of a decree for divorce by the High Court on the ground of cruelty under Section 13(1) (i-a) of the Act. The Hon'ble Supreme Court found that both the husband and wife belonged to a middle class family and were Ayurvedic doctors by profession. Differences had arisen between the parties after nine years of marriage. The sole point for consideration were the allegations levelled by the wife that the husband had developed intimacy with another lady doctor. The husband had also made allegations of sexual misconduct against the wife alleging her

association with the young boys. While disposing of the case, annulling the marriage the Court held:-

> "3. The submission of the learned counsel for the appellant that the Division Bench committed error in observing that matrimonial proceedings are quasi criminal in nature therefore it was for the wife to prove beyond all reasonable doubt that the husband was leading an adulterous life appears to have some merit in view of a decision of this Court in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane.* But we do not propose to examine it as we are satisfied that the marriage is dead and the findings of fact cannot be set aside by this Court except that the appeal can be sent back to the Division Bench to decide it again which would mean another exercise in futility leading to tortuous litigation and continued agony of the parties. We may also mention that the findings of unbecoming behavior of the appellant appear to be shaky. We, therefore, direct that such findings in the judgment of all the courts shall stand deleted. Yet we have decided not to interfere with the order passed by the Division Bench. One of the reasons for this is that the husband on our persuasion agreed to provide a one-bedroom flat to the appellant in a locality where it can be available between Rs. 3 to 4 lakhs. He also agreed to deposit a sum of Rs. 2,00,000 for the welfare of the appellant.
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> 4. Therefore, while dismissing this appeal we direct the husband (respondent) to purchase a flat for the appellant in Thane between Rs 3 to 4 lakhs. He shall further deposit a sum of Rs. 2,00,000 by a demand bank draft in name of the appellant with the Family Court, Bombay which shall be withdrawn by her. The house shall be purchased within six months from today and vacant possession shall be handed over to the appellant."

In **Ajay Sayajirao Desai v. Mrs. Rajashree Ajay Desai AIR 2005 Bombay 278,** the High Court of Bombay following the decision of the Hon'ble Supreme Court in **A. Jayachandra v. Aneel Kaur AIR 2005 SC 534** (supra), reiterated the concept of cruelty, holding:-

> "15. We would also like to consider the submission that the husband is entitled for decree of divorce on the ground that there is irretrievable break down of the marriage. The law is well settled that on the ground of irretrievable break down of marriage, the Court must not lightly dissolve a marriage. It is only in extreme circumstances the Court can use this ground for dissolving a marriage. In this case, the wife at all stages, as observed earlier, and even before us, has been ready to go back to the husband. It is husband, who has refused to take the wife back. The husband has made baseless allegations against the wife. He even went to the extent of filing the false complaints against the wife and her family members with the police at Pune and Nagpur which in our opinion was only to create evidence against the wife. The marriage, therefore, cannot be dissolved on the ground of irretrievable break down. The observations made by the Apex Court in paragraph 17 in A. *Jaychandra (AIR 2005 SC 534) (supra*) case would be material wherein the law laid down in *Shyam Sunder's case AIR 2004 SC 5111* has been reiterated. The relevant observations read thus:
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> > "17. Several decisions, as noted above, cited by learned counsel for the respondent to contend even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the Court can direct dissolution of marriage on the ground that the marriage broken down irretrievably as is clear from

paragraph 9 of *Shyam Sunder's case (AIR 2004 SC 5111) (supra).* The factual position in each of the other cases is also distinguishable. It has held that long absence of physical company cannot be a ground for divorce if the same was on account of husband's conduct. *In Shyam Sunder' s case (supra)* it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves those were exceptional case."

15.1 It is thus clear that the reasons assigned by the husband for his wife not being ready to live with him having been found false the husband cannot be given advantage of his own wrong and granted decree of divorce on the ground of desertion and particularly when the wife is prepared to live with him unconditionally. In our opinion, the petition of the husband, on the ground of desertion also fails. Accordingly, the appeal is dismissed with costs."

However, the High Court of Allahabad in **Poonam Gupta v. Ghanshyam Gupta AIR 2003 Allahabad 51** held:

"14. In the light of the facts as enumerated above and after having gone through the evidence adduced by the parties and hearing the counsel at length, we are in the agreement with the finding recorded by the trial Court that the

plaintiff-husband was unable to prove the case of cruelty by his wife, as in the facts on record, the same could not be established. However, on considering the totality of the circumstances and taking a pragmatic and practical approach that since there are allegations and counter allegations of misbehavior, physical and mental torture by both the parties, we find that it would not be actually possible for the two to live together. Besides this there is also the fact that during the pendency of the petition for divorce, the husband has remarried and has two children. Coupled with this, due to the criminal complaint filed by the wife, the husband remained in jail for sixty three days and also his father and brother were jailed for twenty to twenty five days. Taking all these circumstances into consideration, we are of the opinion that the two parties cannot now live together as husband and wife.

15. While dealing with matrimonial cases, the Court has to strike a balance between the strict compliance of law and the situation emerging from the facts of the particular case. It is a totally different situation where the Court has to judge the rights of the parties with regard to certain property. But when the Court is to deal with human relationships, their lives and also their future living, it is obligatory on the part of the Court to consider whether the two persons whose matter is put before it, would in any way be benefited by the strict compliance of legal principles. We are duty bound to consider the welfare of the parties and come out with a workable solution. Under the scheme of the Act, dissolution of a marriage is normally the last option which the Court should exercise. But when a situation comes up, like the present one, where living together for the two of them is no longer possible or practical, directing the parties to live together as husband and wife would be totally meaningless. The purpose of continuance of such a marriage only for name-sake would

> be futile. In such circumstances, for all practical purposes, the marriage has become dead, both emotionally and practically, with no chances of revival. In the present case, even though the case of cruelty may not have been proved but as the facts emerging from the record clearly indicate that the living of the two as husband and wife would not only be difficult, but impossible, we are left with no alternative but to grant a decree of divorce."

Learned counsel appearing for the respondent has relied upon a Division Bench judgment of this Court in **Anjana Kumari Vs. Vipin Kumar 2002 (1) Hindu Law Reporter 689** holding that where the husband was making false allegations against the wife in order to get rid of her, the wife is bound to protect herself and any complaint which may be made by her cannot be treated as one amounting to mental cruelty to the husband. He also referred to another judgment of this Court in **Smt. Madhu Sood vs. Anil Kumar Sood 1999 (2) CLJ (Himachal Pradesh) 246.** This was a case dealing with a petition under Section 13 (1), 13 –A filed by the husband. The Court, after considering the material on the record, considered the concept of cruelty and the law on the subject in detail and held that where the wife was prepared to join the company of the husband, but the husband was not ready to keep her, it would be a case of non-cooperation and misunderstanding and it cannot be said that the marriage is dead and should be dissolved. He also cites **Sunil Kumar vs. Smt. Reshmi 2007 (1) Civil Court Cases (Punjab & Haryana) 185** holding that irretrievable breaking down of marriage cannot be said to be a ground for divorce. A number of other judgments have been cited but in

view of the law which has been considered the proposition of grant of divorce on grounds of cruelty is now fairly well settled.

A few other judgments need to be noticed. In **Hemavati vs. Puran Chand 2002 (2) Shim. L.C. 440,** this Court while disposing of an appeal under the Hindu Marriage Act held that false, scandalous and malicious allegations, leveled in the written statement amount to cruelty by the husband who made unsubstantiated allegations against the wife willing to live with him. It was held:-

> "37. In the present case, if the husband having made reckless and unsubstantiated allegation against wife, still wants to live with the wife then it cannot but be with the motive to make the life of the wife intolerable and full of mental suffering. It is apparent that the marriage between the parties has broken down irretrievably without any hope of they living together again. Situation is such the wife cannot be asked to continue to live with the husband and more.
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> 39. To conclude, we are of the view that it is not possible for the parties to live together in harmony and peace. The marriage has reached the stage of irretrievable breakdown and the parties cannot be expected to live together."

In **Romesh Chander vs. Savitri AIR 1995 SC 851** the Hon'ble Supreme Court was dealing with a situation where the marriage had become dead emotionally and practically. Exercising powers under Article 142 of the Constitution of India, the Court dissolved the marriage considering the fact that the parties had been living apart and it was not possible for them to live together. Further, the son born from the marriage had been gainfully employed. To similar effect is the judgment of the Hon'ble Supreme Court in **Rishikesh Sharma vs. Saroj Sharma 2006**

(3) Shim. L.C 389. This court, while dealing with a similar situation in **Bharti Sharma vs. Surinder Kumar Sharma 2003 (2) Shim. L.C 255** found on facts that the parties had been living separately for the last 15 years. The wife was willing to reside with the husband but the cause of dispute between them was not settled. It was held:-

> "29. In so far as the case in hand is concerned, it is true that the parties are now living separately for the last about 15 years. The appellant, however, has specifically stated in her statement that she was still willing to reside with the respondent but the cause of dispute between them is the house. This may though appear not to be a very sincere offer the fact, however, remains that the appellant is residing in her parents house not without a reasonable cause but for the sufficient reason that she was deprived of the ownership of the house which was purchased in her name at Jagadhari. The respondent instead of settling the dispute regarding the ownership of house by amicable means with his wife has created a situation affording reasonable cause to the appellant not to live with him but to live at the house of her father. Therefore, the long separation between the parties being attributable to the act and conduct of the respondent, he cannot be permitted to take advantage of the plea of irretrievability of the marriage."

Following the ratio in the case of **Savitri Pandey** vs. **Prem Chand 2002 (2) SCC 73** holding that a dead marriage should not be kept alive a decree of divorce was granted. It is in the totality of the law as laid down in the judgments above that the case of the parties has to be considered on the evidence on the record. It would be noticed, that although the facts in two cases are not similar, certain common points can be culled out and the ratio of the judgments to the effect that (a) there is no

hope of reviving the marriage or keeping the marriage alive, (b) parties have been living separately for a considerable period of time with no hope of conciliation (c) consideration of the fact that now the son of the parties is also employed married and settled have to be kept in mind before a decision is taken. It may be emotionally appealing to keep the marriage alive yet, sentiments have to yield to the harsh realities of life. It is in the entirety of these circumstances that the evidence of the parties is to be considered.

In **Samar Ghosh** vs. **Jaya Ghosh (2007) 4 SCC 511** the Hon'ble Supreme Court considering the entire case law as also comparative study of the law in Common Wealth Countries and in the United States held:-

> "98. On a proper analysis and scrutiny of the judgments of the Supreme Court and other courts, there cannot be any comprehensive definition of the concept of "mental cruelty" within which all kinds of cases of mental cruelty can be covered. No court should even attempt to give a comprehensive definition of mental cruelty.
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> 99. The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in another case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and the value system.
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> 100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic

media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never by any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors into consideration.

101. No uniform standard can ever be laid down for guidance, yet it is deemed appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, but frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset, but may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

The Court has recognized the principle that non-co-habitation for a long period of time itself constitutes a break-down of marriage where it would not be proper to force the parties to live together.

The learned District Judge, on a scrutiny of the entire evidence on the record, attributed the fault for break down in the marriage to the appellant holding that he could not take advantage of his own wrong. He holds that because of the disparity in the educational qualifications of the parties, there is an ego problem and not break down of the marriage as alleged. He holds that Ext. D-1 which is a deed for dissolution of marriage is fatal to the case of the petitioner as he was responsible for preparing this document and minor disputes/quarrels in matrimonial life will not entitle the petitioner to claim divorce.

I am unable to subscribe to the conclusions arrived at by the learned District Judge. The evidence of the parties does not support these findings. The appellant had approached the court with a specific averments that the respondent started pressurizing him to stay away from

his parents and members of the joint family whom he was looking after and supporting as he was the only earning member. On his refusal to do so, she started quarrelling on the slightest pretext(s) making life difficult for the appellant. He also alleges and proves that respondent without sufficient cause refused to discharge her matrimonial obligations and denied physical access to the appellant and willfully abstained from sexual relations. He pleads that in order to settle the matter amicably, the appellant was prepared to give her separate residence where he would maintain her for the rest of her life. He has specifically pleaded that two complaints Ext. PW-7/A and Ext. PW-7/B made by the respondent against the appellant to his employer were without justification containing bald unsubstantiated allegations against him for living in adultery having illegitimate children and not maintaining the respondent and allegations that there was danger to her life and limb. The appellant submits that these allegations being unsubstantiated without proof and justification, absence from physical relationship, allegations made to the employer, bickering and quarrelling on the slightest pretexts when considered in totality, constitute cruelty within the meaning Section 13 (1) (i-a) of the Act and that he was entitled to divorce. The necessary pleadings may be noticed at this stage:-

> "4.That after the marriage the relationship between the petitioner and the respondent remained normal for some time but thereafter respondent started putting pressure on the petitioner that he should get himself separated from his parents so that the petitioner and the respondent can be in a position to have independent life and further saved from liabilities of joint family. It will not be out of place to

mention that petitioner is the eldest male member of the family, having 3 younger brothers and 2 sisters, who were studying in different classes at that time. The petitioner refused to scumb to the pressure due to which the behaviour of respondent started changing, she developed habit of finding faults with the family members, on one or other pretext and then to create trouble. The petitioner thought that with due passage of time, respondent will understand the realities of life and will adjust herself in the family but the lenient attitude of the petitioner had negative effect and the respondent took that the petitioner is coward some person and so she can pressurize him under such impression and at the instigation and advise of some vested interest, the respondent started leaving her matrimonial home without any intimation to the elders and petitioner. The respondent further started showing disrespect to the elders of the family and many times, even, to petitioner.

5. That respondent when found that her pressure, acts and attitude is not yielding any result, she, though live in the same house, snapped matrimonial relations with the petitioner, i.e., the respondent ceased to have any physical relationship with the petitioner. The respondent used to quarrel with the petitioner and to cause such mental tension etc., with a motive to pressurize the petitioner, so that petitioner may concede her wrong demands.

9. That the petitioner compelled by circumstances filed a petition under Section 10 of the Hindu Marriage Act, 1955, the same is pending in the Hon'ble Court and is now fixed for 16.4.1999. The petition has been preferred to have peace in the life. Prior to filing of petition under Section 10 of Hindu Marriage Act, 1955, the petitioner had no knowledge about the subsequent actions of the respondent, but during the pendency of petition, the petitioner came to

know that the respondent with ulterior motive has filed various complaints to various officers against the petitioner.

10. That respondent filed a complaint dated 10.8.1998 to Director Industries wherein she leveled false allegations against the petitioner that the petitioner has been expressing his desire to solemnize second marriage and after exercising fraud got a divorce deed prepared but despite of tortures and pressure respondent did not sign the same and thereafter said document was handed over to respondent and thereafter also she was maltreated, such complaint has also been sent to Hon'ble Chief Minister of H.P. Hon'ble Industries Minister, General Manager D.I.C. Chambaghat besides filing of complaint respondent sought personal interview with the Director Industries and leveled false and baseless allegations. It will not be out of place to mention that respondent has been creating trouble in one or other manner and she herself desired to obtain divorce and it was only at her instance a document was prepared and even signed by the petitioner, such documents was handed-over to the respondent with the advise that she should not use the document and should rethink of her intention of divorce. At no point of time the petitioner tried to obtain her signatures or to have divorce as alleged. Due to behaviour of the respondent the petitioner had to undergo mental tension and pressures. Thereafter again the respondent filed a complaint to the Financial Commissioner-cum- Secretary (Industries) Govt. of H.P. where she had made complaint alleging that the petitioner has remarried again and is keeping a second wife. The relevant portion of the complaint reads as under:-

"It has come to my notice that he has married some where at his present posting station i.e. Baddi, District Solan and having children of second illegally wedded wife and is at presently residing with the family acquired illegally……

"*……..therefore, it is evident that my husband is having a legal spouse, how he can enter into the 2nd marriage, thereafter, becomes disqualified for continuation in government service……"*

"That there is also a grave danger to my life….. as such necessary protection may also be provided."

The above complaint was also sent to Director Industries, Deputy Commissioner Solan, S.P. Solan, Sub Divisional Magistrate Arki and General Manager D.I.C. Chambaghat Solan, H.P. The respondent knowing fully well that allegations leveled by her in complaint are false and have no basis, with malafide intention widely propagated the allegations against the petitioner, so as to cause loss and injury to the reputation and image of the petitioner. On the complaint of respondent the Director Industries conducted enquiry result thereof is not known to the petitioner, but the contents of complaint on account of circulation and propaganda by the respondent came to knowledge of all persons, specially these working with the petitioner, his relatives and other associates etc. Due to false and malicious propaganda not only image of the petitioner has been lowered in the eyes of friends and relative etc. but the petitioner suffered heavy mental shock.

11. That respondent has now started leveling open allegations that petitioner is having loose moral character and is a corrupt person, she is further propagating that even after the marriage the petitioner was having physical relations with other ladies and girls and is a undependable person. This propaganda is intentionally carried in the relatives and persons having any type of dealing with the petitioner, so much so whenever the petitioner had been coming to the courts in connection with earlier proceedings, the respondent and his relatives have tried to create scene and to level false allegations in loud voice, so that the petitioner can be humiliated in open and in presence of

> general public, all such is being done with malafide intention. Despite of effort and request on the part of petitioner, the respondent and her relatives have not stopped false and malicious propaganda, such propaganda is being made with an attention to humiliate and further demoralize the petitioner, the acts of the respondent amounts to cruelty. Due to acts of cruelty, the petitioner has suffered loss, mentally as well as physically. Now the situation has cropped up from where there is no point of return and it is not possible for the petitioner to live with the respondent under any circumstance in future and as such the marriage between the parties have reached to an irretrievable end."

These allegations are being noticed in detail as, in the written statement filed by the respondent, there is a bald denial of each and every fact. The submission of the respondent is that she is an illiterate and village lady and the appellant is manipulating facts to suit his convenience. She does not admit making any complaint to the employer of the appellant.

It is undisputed that Section 13 (1) (i-a) of the Act includes both mental and physical cruelty. Ext. P-2 is a letter dated 26th October, 1998 addressed by the General Manager, District Industries Centre, Solan to the Member Secretary SWCA, Badi asking him to enquire into the complaint made by the respondent against the appellant and to submit a detailed report on the allegations made. Ext. P-3 is a communication dated 11th September, 1998 sent by the Director, Industries to the General Manager, Industries asking him to conduct a detailed enquiry into the complaint received from the respondent against the appellant through the Office of the Secretariat of the Chief Minister. Ext.P-4 is a

communication dated 7th December, 1998 sent by the General Manager, District Industries to the Director of Industries submitting his findings on the complaint made against the appellant. Ext. PW-7/A is a complaint addressed by the respondent to the Director of Industries, H.P. She details that the marriage between the parties had been solemnized about 22 years back. According to her, the appellant threatened her to sign some documents including a divorce deed failing which she would face dire consequences. She says that no maintenance expenditure is being paid to her. She writes that prior to filing this complaint, she had made another complaint on 6.8.1998 and submitted an application (prathna ptar). Ext. PW-7/B is another complaint addressed to the Financial Commissioner-cum- Secretary, Industries complaining about the bigamous acts of the appellant and stating that there is a great danger to her life.

This complaint may be noticed in detail as the respondent alleges that she has been thrown out of the house w.e.f. 4.8.1998, the appellant has contracted a second marriage at his place of posting i.e. Baddi in District Solan and has children from his second wife. The appellant had developed illegal sexual relations with another woman. She states that she is the legally wedded wife of the appellant who cannot marry again, she has no place to live, and she may be provided maintenance in accordance with law. She reserves her right to approach "Women Rights Commission" as she is facing grave danger to her life and limbs. As noticed, the respondent had denied these allegations in her pleadings. She admits making the complaint Ext. PW-7/A in her evidence and says that she has signed it although she denied having made the complaint Ext. PW-7/B.

Testimony on behalf of husband is his own evidence where he reaffirms the allegations which he has made against the respondent. Amongst others witnesses he has also summoned officials i.e. PW-2 Shri Negi, Managing Director, Industries who was asked to enquire into the complaints made by the respondent. PW-7 Shri T.R. Sharma who produced the personal file of the appellant and testified that the complaints Ext. PW-7/A and Ext. PW-7/B had been received by the employer against the appellant. To similar effect is the statement of PW-8 Shri Bihari Lal, Superintendent in the Industries Branch of the Secretariat who produced the original record of the complaints. It cannot be accepted that the allegations which the appellant has made are baseless or fabricated. The reasoning of the learned District Judge that the disparity in educational qualifications between the two parties has led to a break down in the marriage also does not commend itself for acceptance. There is no dispute that at the time when the parties were married. the appellant had not been awarded a doctorate. The evidence on the record shows that he struggled through his employment and worked for higher qualifications. Surely, during this period it was his family who were a source of assistance and encouragement to him. The allegations in Ext. PW-7/A and Ext. PW-7/B had set the Government machinery in motion against the appellant for enquiry into his conduct as to whether he was living a bigamous life or was threatening the appellant with dire consequences and posing a danger to her. It is common knowledge that these complaints do cause negative effect on the career graph of a person. On the evidence on the record, I do not find that the appellant was at any point of time instrumental in making such complaints. There is also no

evidence to suggest that the appellant had, in fact pressurized the respondent to sign any documents which was allegedly fabricated. There is no evidence to show that Ext. D-1 (deed of divorce) was fabricated by the appellant. Agreements P-1 and R-1 are similar stating that the parties would live apart and respondent provided a separate residence and maintenance by the appellant.

The submission of learned counsel for the respondent that it was the petitioner who himself was responsible for creating the state of affairs in which the appellant himself was responsible for causing irretrievable break down in marriage cannot be accepted. The evidence also does not show that the official witnesses produced by the appellant namely; PW-2 Shri Negi, PW-7 T.R. Sharma and PW-8 Bihari Lal were partisan witnesses being government officials and cannot be trusted as they are supporting the case of the appellant. The authenticity of the official record Ext. P-2, P-3 and P-4 its contents and follow up action cannot be doubted. The respondent's bald denial of all allegations made in the divorce petition followed by the acceptance in evidence of Ext. PW-7/A having been filed by her, itself shows that testimony is not worth relying upon. I am also not impressed by her statement made in Court that she is willing to spend her life with the petitioner. Had this been so, the petitioner would not have been forced to file the petition under Section 10 of the Hindu Marriage Act for restitution of conjugal rights and she would not have made two complaints Ext. PW-7/A and Ext. PW-7/B on allegations which were baselsss. Irrespective of the alleged illiteracy which she professes, she should have been aware of the fact that the complaints had travelled through all official channels causing serious

harm to the reputation and career of the appellant. All the allegations have been made in these complaints are unsubstantiated and without justification.

Section 13 (1) (i-a) provides:-

> "13. **Divorce.-**(1) *Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-*
> *(i)……*
> ***(i-a)** has, after the solemnization of the marriage, treated the petitioner with cruelty; or……."*

The totality of the circumstances on the record leave no doubt in my mind that the appellant has been treated with cruelty and that the acts of the respondent in :-

(a) In making bald and reckless allegations against the appellant of sexual misconduct, bigamy, fathering illegitimate children, threatening the respondent with dire consequences and posing danger to his/her life and limb, activating the official machinery against him.

(b) Withdrawing from the matrimonial home without justification, abstaining from sexual relationship without any reasonable cause, in totality constitutes acts which would amount to mental cruelty within the meaning of the Act.

The test to be applied in this case is one as laid down by the Hon'ble Supreme in **Samar Ghosh** (supra), coupled with the fact that bringing both the parties together and denying relief to the appellant at this stage would be performing only a ritualistic act with no tangible

results keeping in view the age of the parties and also considering that the marriage has now broken down irretrievably, a decree for divorce is granted in favour of the appellant.

I am alive to the situation that divorce should not be granted at the mere whim or asking of a party nor can it be a reward for unjustified behaviour giving reasonable opportunity to the opposite side to withdraw from the matrimonial home. At the same time, considering the conspectus of the entire case law and the facts brought on the record, I do not find any reason to deny relief to the appellant.

This appeal is accordingly allowed. The judgment passed by the learned District Judge is quashed and set aside. The marriage between the parties is dissolved by a decree of divorce. A further directions is issued that the husband should provide for the wife a permanent decent residence and monthly expenditure for her maintenance @ 5000/- per month or deposit a sum of Rs. 10 lacs in lieu of maintenance and residence to the respondent to which she would be entitled. There shall be no order as to costs.

23rd October, 2007. **(Dev Darshan Sud)**
(cm) **Judge.**